

Our ref : FT/jk  
Direct dial : (011) 322-4556

The Minister of Finance  
The National Treasury  
P O Box 29  
CAPE TOWN  
8000



14 January 2005

Dear Sir,

**DRAFT AUDITING PROFESSION BILL AND COMPANIES ACT  
AMENDMENTS**

We support the issue of the "Draft Auditing Profession Bill, 2004" issued for public comment, together with "Companies Act, 1973: Proposed Amendments to Further Enhance the Integrity and Independence of the South African Auditing Profession" and are pleased to comment as follows:

**1. General**

We welcome legislation designed to further enhance the independence of the auditing profession in South Africa, particularly in regard to the audit of publicly accountable entities. Many of the recommendations are in line with international trends and we believe it important to consider all aspects of international best practice. Comments on some detailed aspects of the draft legislation are as follow:

**2. Independent Regulatory Board for Auditors**

Section 3(2) provides that not more than two-fifths of the members of the IRBA are registered auditors. The legislation should also provide for minimum representation by registered auditors on the IRBA. We recommend a minimum of 30% that is representative of the auditing profession, i.e., that includes large, mid-tier and small audit firms.

137 Daisy Street  
cnr Grayston Drive  
Sandown, 2196

Private Bag X28  
Benmore 2010  
South Africa

Dx 169 Randburg  
T +27 (0) 11 322-4500  
F +27 (0) 11 322-4545  
E [info@gt.co.za](mailto:info@gt.co.za)  
W [www.gt.co.za](http://www.gt.co.za)

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J. Feinstein

3. **Multi disciplinary partnerships**

Sections 12(1)(a) and (3)(b) require that to become registered auditors all the individual partners in a partnership or directors in a company must be registered auditors. We believe the legislation should make provision for individuals with skills other than auditing to become partners. Many audits require multi-disciplinary skills, e.g. audit, tax, internal audit, information technology and forensic accounting. Individuals providing these services should not be precluded from partnership or directorship. Furthermore, there is no prohibition on the provision of non-audit specialist services to businesses that are not audit clients.

4. **Obligations in relation to an audit**

Section 20(1) inter alia states that "the auditor may not ..... express an opinion to the effect that any financial statement, including any annex thereto .....". It should be clarified that the audit opinion is rendered only on the information specified in the audit report. The audit opinion does not extend to any annex not referred to in the audit report

5. **Auditor having financial interest in entity excluded from audit**

Section 21(1) provides that a registered auditor may not conduct the audit of any financial statements of an entity if at any time during the two years ending at the beginning of the period to which the financial statements relate, the auditor has or had a financial interest in the entity. We submit that this provision is too onerous for practical application. Retrospective application would make it very difficult if not impossible for listed companies whose shares are widely traded to change auditors, for audit firms to merge and for registered auditors to move from one audit firm to another. It might also delay or prevent the appointment of new partners in certain circumstances. We recommend that the financial interest exclusion should be with effect from the date of the appointment and should extend for one year following resignation of an audit. Furthermore the term "financial interest" needs to be further clarified. e.g. Is an indirect interest via a unit trust or index prohibited? May the audit firm and its partners bank with a bank they audit?

6. **General obligations in relation to an audit**

The general obligations refer to an audit of financial statements. We recommend that the legislation should also deal with other levels of assurance and information other than financial statements.



7. **Auditors duty to report on irregularities**

We welcome clarity on the meaning of 'material irregularity'. Section 22 should also clarify that, when an auditor reports to the IRBA in terms of this section, fulfilment of this duty satisfies all legal duties of the auditor to render a report on this specific matter, e.g. duties arising from POCA and FICA. There should not be multiple reporting requirements.

8. **Limitation of liability of auditor for opinions, reports, statements, etc.**

International best practice is to allow for the limitation of liability of auditors. e.g. US and UK allow Limited liability partnerships (LLPs). The legislation should provide for limiting liability

- to the partner who renders the opinion
- to the assets of the partnership or company (limited liability partnership)

The legislation should place legal onus on parties to make full disclosure to auditors, (as in Sarbanes-Oxley legislation). In particular, it should be a criminal offence for anyone to deliberately mislead an auditor in the conduct of his duties.

9. **Practice Review**

Section 24 on Practice Review should clarify regulation of

- the firm as a registered auditor
- the individual registered auditor

and should clarify the consequences of a firm losing its registration. The legislation should allow for public reporting of the results of Practice Review.

10. **Funding**

Consistent with international best practice, in order that regulation of the Auditing Profession is seen to be independent, (particularly by regulators in other countries),- the legislation should provide for funding from third parties, e.g. government, companies and the JSE.

11. **Reciprocal recognition**

The legislation should provide for reciprocal recognition of Audit Regulators in other countries.

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12. **Disciplinary matters and investigation procedure**

Chapter V deals with the appointment of a tribunal and committees to carry out disciplinary functions. The establishment of the investigation committee should also be dealt with.

Should you wish to discuss any of these issues further, please contact Leonard Brehm (tel. 011 322-4565) or Frank Timmins (tel. 011 322-4556).

Yours faithfully  
**GRANT THORNTON**

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